

HONORABLE MARSHA J. PECHMAN

UNITED STATE DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

BRYAN D. MIZE,

Plaintiff,

vs.

JPMORGAN CHASE BANK, N.A.;  
NORTHWEST TRUSTEE SERVICES,

Defendants.

NO. 2:11-CV-01245-MJP

JP MORGAN CHASE BANK, N.A.'S  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR VOLUNTARY  
DISMISSAL

NOTE ON MOTIONS CALENDAR  
SEPTEMBER 14, 2012

COMES NOW the defendant, JPMorgan Chase Bank, N.A. (hereinafter "Chase") by and through its attorneys of record, Devra D. Featheringill, and Bishop, White, Marshall & Weibel, P.S. and submits the following Opposition to the Plaintiff's motion for voluntary dismissal. Docket No. 43. Chase requests that this Court deny the motion to dismiss without prejudice. Chase has filed a motion for summary judgment, and expended significant legal resources in defending Plaintiff's allegations. Chase is entitled to an adjudication on the merits.

CHASE'S RESPONSE TO PLAINTIFF'S  
MOTION FOR VOLUNTARY  
DISMISSAL.- 1  
Case No.: 2:11-cv-01245-MJP

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1 Further, it is Plaintiff's burden to be ready to prosecute his claims when he filed the  
2 action. Plaintiff filed this case on July 27, 2011. Docket No. 1. Since then, he has  
3 propounded discovery, sent out subpoenas, and filed various motions. Both defendants  
4 have responded to discovery, and have filed motions for summary judgment, which are  
5 currently pending. Plaintiff did not seek to have the case dismissed until both motions  
6 were filed.

7 Fed.R. Civ.P. 41(a)(2) provides that "an action may be dismissed at the plaintiff's  
8 request only by court order, on terms that the court considers proper." The purpose of Rule  
9 41(a) (2) is to protect the nonmovant from unfair treatment. *Bridgeport Music, Inc. v.*  
10 *Universal-MCA Pub., Inc.*, 583 F.3d 948, 953 (6th Cir.2009). Whether dismissal should  
11 be granted is within the sound discretion of the Court. *Grover by Grover v. Eli Lilly and*  
12 *Co.*, 33 F.3d 716, 718 (6th Cir.1994). In analyzing a motion to dismiss Fed. R. Civ. P.  
13 41(a)(2), the Court must determine whether the defendant/nonmovant would suffer legal  
14 prejudice from a dismissal without prejudice. *Id.* In reviewing whether the defendant(s)  
15 will suffer legal prejudice, the Court must consider factors such as "the defendant's effort  
16 and expense of preparation for trial, excessive delay and lack of diligence on the part of the  
17 plaintiff in prosecuting the action, insufficient explanation for the need to take a dismissal,  
18 and whether a motion for summary judgment has been filed by the defendant." *Id.* at 718.

19 Here, Chase will suffer legal prejudice if Plaintiff is permitted to dismiss this action  
20 without prejudice. Over the course of the past year, Chase has been required to expend  
21 legal expense and resources in responding to discovery requests, a number of motions,  
22 filing its pending motion for summary judgment, and otherwise defending Plaintiff's  
23  
24

1 allegations. Further, Plaintiff could have dismissed this matter without prejudice at any  
2 point prior to the filing of the motions for summary judgment by Chase and Northwest  
3 Trustee Services, Inc.. Plaintiff gives no reason for the delay in filing his motion to  
4 dismiss. It is evident that Plaintiff filed the motion in order to avoid a potential dismissal  
5 with prejudice on Defendants' motions for summary judgment. If Plaintiff is allowed to  
6 dismiss the case at this late date, Defendants will be denied the opportunity to have this  
7 matter adjudicated on the merits pursuant to their motions, and forced to expend more  
8 litigation costs should Plaintiff re-file.

9  
10 Accordingly, Chase requests that Plaintiff's Motion to Dismiss pursuant to 41(a)(2)  
11 be granted only if dismissal is with prejudice.

12 DATED this 10th day of September, 2012.

13 By: /s/Devra Featheringill  
14 Devra Featheringill, WSBA #32182  
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21 Attorneys for Defendant JPMorgan Chase Bank,  
22 N.A.  
23  
24

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of September, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Western District of Washington by using its CM/ECF system which will send notification of such filing to the following CM/ECF participants:

Heidi E. Buck	<input type="checkbox"/> By United States Mail
Routh Crabtree Olsen	<input checked="" type="checkbox"/> By CM/ECF
13555 SE 36 <sup>th</sup> St, Ste 300	<input type="checkbox"/> By Federal Express
Bellevue, WA 98006	<input type="checkbox"/> By Facsimile

E: [hbuck@rcolegal.com](mailto:hbuck@rcolegal.com)

*Attorney for Defendant Northwest Trustee Services*

Ha Thu Dao	<input type="checkbox"/> By United States Mail
3501 Rucker Ave	<input checked="" type="checkbox"/> By CM/ECF
Everett, WA 98201	<input type="checkbox"/> By Federal Express
	<input type="checkbox"/> By Facsimile

E: [hadaojd@gmail.com](mailto:hadaojd@gmail.com)

*Attorney for Plaintiff*

Signed this 10<sup>th</sup> day of September, 2012 at Seattle, Washington.

By: s/Kay Spading

Kay Spading, Legal Assistant  
Bishop, White, Marshall & Weibel, P.S.